

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

MINNIE LOU VANCLEVE,

Petitioner,

v.

**CIVIL ACTION NO. 3:08-CV-91
(BAILEY)**

WARDEN, SFF HAZELTON,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on June 26, 2008 [Doc. 8]. In that filing, the magistrate judge recommended that this Court deny and dismiss with prejudice petitioner's application under 28 U.S.C. § 2241 [Doc. 1], which the magistrate judge has correctly pointed out is actually a § 2255 petition in sheep's clothing.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten days of its receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket shows Ms. Vancleve accepted service of the R & R on June 27, 2008. Neither party filed objections to the R & R. Rather, the petitioner filed a motion for reconsideration on July 14, 2008. See Doc. 10. Accordingly, this Court will review the report and recommendation for clear error.

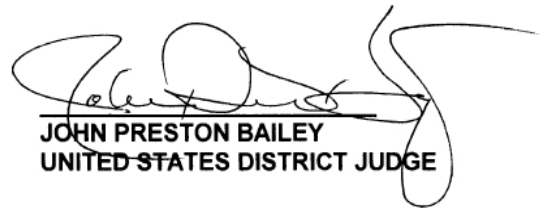
Therefore, upon careful review of the R & R, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 8**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DISMISSES with prejudice** the petitioner's application under 28 U.S.C. § 2241 [**Doc. 1**] and **ORDERS** it **STRICKEN** from the active docket of this Court.

As a final matter, this Court has reviewed the petitioner's newly-filed motion for reconsideration of her Florida petition, which was filed under 28 U.S.C. § 2255 [Doc. 10]. That motion is denied for two reasons: first, the petitioner has previously filed two petitions under § 2255, which were both dismissed with prejudice; second, if this was her first § 2255 petition, this Court would dismiss it as untimely. Accordingly, the motion for reconsideration [**Doc. 10**] is hereby **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a true copy to the *pro se* petitioner.

DATED: August 13, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE